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## LAW OF DOMICILE UNDER INTERNATIONAL LAW

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### ABSTRACT

Domicile is a crucial link in the chain of conflict of laws. It has a significant impact on taxation, marriage law, and property law, and may be quite helpful in the event of a controversy. Under various areas of law, it determines the contracting parties' capacity to enter into a binding agreement. It is impossible to eradicate one's place of origin. An individual can always fall back on the domicile of origin to cover any gaps left by a move away from a domicile of choice later down the road. Every person is born with a place of origin, and that place tends to stick with them for the rest of their lives. In this paper, importance of domicile with respect to international law is discussed in an edifying manner. People who leave their chosen domicile of residence by moving elsewhere are required by law to take over or return to their home country's domicile of origin. As a result, knowing the notion of residence is critical in the field of international law, as well as in many others. This paper will also elucidate different legal principles and treaties of international law, where domicile plays an indispensable role for an individual.

### INTRODUCTION

A person's connection to a legal rule is established through the criterion of Domicile in all of the countries around the world that adhere to the Common Law principle or customs. This criterion is used in matters of personal status and succession in all of the countries around the world that practice Common Law principles or traditions. If there is a disagreement over whether a person who is a resident of or a national of another country has the capacity to marry, or if it is essential to determine who is entitled to succeed to a deceased person's moveable property, this is especially important in conflict of law circumstances. Residence is a concept that is either governed by conflict of laws or by international law. 'Domicile' is a legal term that refers to the country where you consider your "roots" to be or where you have a permanent residence. The

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domicile of a person or an individual is often relevant to the whole nation, rather than just a portion of it, and is not limited to a particular region. No person or individual may be said to be without a domicile, according to common law principles. It is also a rule that a person who owns more than one residence is not permitted to have more than one residence at the same time. Once an existing domicile has been established on the balance of probability, the propositus is deemed to have continued in that location. This illustrates how the idea of residence per se varies from country to country based on the jurisdiction of the country in question.<sup>2</sup>

### IMPORTANCE OF DOMICILE

Domicile, as a legal document, plays an extremely essential part in the life of a person who lives in a global community of individuals. When a person selects his or her domicile, he or she is liable to a slew of legal repercussions and implications that arise from the notion of domicile.

- (i) When a person selects his or her domicile, he or she is liable to a slew of legal repercussions and implications that arise from the notion of domicile. It has been used to decide jurisdiction over the assessment of state income and death taxes,
- (ii) Primary jurisdiction over the probate of wills and the administration of estates, and
- (iii) Judicial jurisdiction over a particular person. In addition, a person's place of residence impacts whether and where they may exercise numerous legal rights and protections, such as voting.

Some of the most significant implications of a person or an individual having a domicile are as follows: A person's or an individual's domicile determines the marital law that applies to each participant on the basis of his or her residence in that particular area of the world.<sup>3</sup>

- Only partners who have a residence may be divorced under the law of descent and distribution.

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<sup>2</sup> N, “*Nationality, Domicile, Residency, Citizenship and Beneficial Ownership*” (T Consult Ltd. October 10, 2018) &lt;https://tconsult-ltd.com/nationality-domicile-residency-citizenship-and-beneficial-ownership/&gt;. Last accessed on December 31, 2021

<sup>3</sup> Amir M, “*The Concept of Domicile: Statutory Position in India*” (SSRN: April 26<sup>th</sup>, 2021) &lt;https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=3832526&gt; last accessed on December 31, 2021

- The interpretation of a person's will be determined by the legislation of their jurisdiction. Only after finding the domicile of the person or individual in question may the intestate succession or the execution of that individuals will take place.
- Only after determining the domicile of the person or individual in question can the tax consequences be determined.<sup>4</sup>

## PRINCIPLES THAT GOVERN LAW OF DOMICILE

The principles that govern the domicile includes:

- **Without a residence, no person or individual can exist:** A domicile is an unavoidable concept and norm that every individual or group of individuals must follow. In any case, it is a well-established norm that will not be altered under any scenario. There is a rationale for the formation of this principle: every individual should be linked to a certain legal system in order for their activities to be controlled by categorising them or putting them into a specific legal framework. An individual has the right to choose where he or she wants to live. However, someone who lives in the global forum does not have the option of exercising their right to be without a residence, as opposed to the other way around. Initially, the place of birth of a person or an individual determines the person's or individual's domicile. If the individual is a legitimate child, the individual inherits the domicile of his or her father. If the individual is an illegitimate child, the individual inherits the domicile of his or her mother.
- **No person can simultaneously have two domiciles:** As one of the fundamental principles of domicile, it is important to note that, because no individual may enter or leave without a domicile, no one can have more than one domicile at the same time. One of the reasons for establishing this principle of law of residence is that it binds an individual to a certain set of laws of domicile A person or an individual being permitted to have one or more domiciles would undermine and frustrate the fundamental goal and purpose of having a domicile, which is to restrict the acts of an individual. The Indian Constitution only recognizes one residence for a single individual.
- **The basic aim of domicile is to associate an individual with a territorial system of law:** Whenever we talk about a person's domicile, we are referring to the legal system under which

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<sup>4</sup> “Analysis on Law of Domicile (N.rojaRani,Advocate ... - Alsi” & lt;<https://alsi.edu.in/images/conflict-of-law.output.pdf>; last accessed on December 31, 2021

that person is governed. When we talk about a country's domicile, we are assuming that the same legal system applies across that country. The rules governing succession and marriage may not be the same throughout the country, and various sections of a jurisdiction may have laws governing these things that are distinct from one another. In that situation, each territory with its own set of rules would be considered a separate nation for the purposes of determining where one should live.<sup>5</sup>

- **The presumption is always in favour of maintaining the present domicile**: until and unless an individual acquires new domicile, it will be presumed that he or she retains his or her former domicile. The person who says that he or she has gained new domicile bears the burden of proving this. It has been argued by certain jurists that in some situations, such as those involving a domicile for relying on and others involving a habitation, the evidence burden is more delicate than it is in other situations.

## DOMICILE, NATIONALITY AND RESIDENCE

### Domicile

A domicile is a permanent residence, and if that concept is not comprehended by itself, no example will be able to assist make it more understandable." As defined by MORRIS, "it is critical to determine an individual's personal law, which controls matters relating the personal and proprietary ties among members of a family." "The place of birth is an insufficient criterion for identifying the personal law of a person." A person's domicile is the nation in which he or she either has or is assumed to have his or her permanent home, as determined by law. A prominent American Judge, Oliver Wendell Holmes J, described the notion of domicile as "The essential definition of domicile is the technically pre-eminent headquarters that every individual is forced

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<sup>5</sup> Santynirvaan, "Critical Analysis of Law of Domicile in the Domain of Private International Law" (Legal Service India - Law, Lawyers and Legal Resources); <https://www.legalserviceindia.com/legal/article-400-critical-analysis-of-law-of-domicile-in-the-domain-of-private-international-law.html#:~:text=Generally%2C%20the%20national%20who%20enjoys,person%20has%20his%20permanent%20home.&gt;> last accessed on December 31, 2021

to have in order that certain rights and responsibilities that have been attached to it by the law may be decided".<sup>6</sup>

### **Nationality**

There have been several extensive debates on the concept of nationality supplied by international law professors; nonetheless, they have not reached a consensus on the issue. What is striking, however, is the political and domestic aspect of nationality, which is a position or trait that is derived from the fact that an individual is a citizen of a nation or state in which they reside. It is possible to define nationality in the simplest and most complete way possible, which is as follows: Nationality is a political, legal, and spiritual bond that connects an individual to a certain state.<sup>7</sup>

According to the definition of nationality, it may be said that nationality contains the following characteristics.

- Nationality is a political connection since it is a result of a state's authority to exercise sovereignty over its citizens. It is the state that establishes who its nationals are and what requirements must be met in order to get nationality in that country. In reality, nationality determines an individual's political standing by requiring him or her to pledge allegiance to the state's laws and to obey them.
- Nationality is a spiritual relationship since citizens relate a country to an entity in terms of their common aspirations, customs, and rituals, which are not reliant on specific locations or times. When someone is designated as a state's national, he or she is treated as if he or she were a national of that state, regardless of where he or she travels. As a result, changing one's place of residence has no effect on one's spiritual bond with the country of one's nationality.
- Nationality and its precepts are some of the most crucial matters in private international law, because this field deals with the legal relationship between individuals of different nationalities, and the differences between laws are caused by the differences between nationalities. Furthermore, nationality is manifested as the most outstanding sign of geographical divisions of individuals, such that it separates the individuals of one state from

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<sup>6</sup> Hill J, "6. *Domicile, Nationality, and Habitual Residence*" (Law Trove);

<https://www.oxfordlawtrove.com/view/10.1093/he/9780198732297.001.0001/he-9780198732297-chapter-6>; last accessed on December 31, 2021

<sup>7</sup> "Nationality" (Encyclopædia Britannica) &lt;<https://www.britannica.com/topic/nationality-international-law>; last accessed on December 31, 2021

the individuals of other states, and the differences between laws are caused by the differences between nationalities.

### **Residence**

Common law provinces have the challenge of evaluating "residence" in part because the phrase is often changed by terms like "ordinary," "actual," or "habitual," each of which modifies the basic meaning of the word "residence." In addition, the meaning of the term may be influenced by whether it is used as a choice of law or jurisdiction concept, and in addition, the term can be used alone or as part of a grouping of important contacts approach. A person is considered to be a resident of the province, state, or nation in which his or her primary residence is located. A referral to "ordinary residence" rather than "residence" was used more frequently in family law disputes. To begin with, courts in common law jurisdictions interpreted ordinary residence in accordance with the term established by the Income Tax Act. A person's "residence," as opposed to his or her "presence," is characterized by a stable and long-lasting relationship with a location. When it comes to residence, it is viewed largely as a factual conclusion, rather than a notion of law, as it is when it comes to residence.<sup>8</sup>

In addition, nationality is a legal connection since it has legal ramifications in both the international and local legal systems. In the international system, the nationals of a state have protection of their own state outside their own country, as well as protection of all internationally recognized principles and values (e.g., treaties). It is important to note that the relationship between nationality and nationality is inherent in nature because, in the domestic system, the national on the one hand possesses political rights (for example, the right to vote) and on the other, he or she benefits from all rights adopted by civil and commercial laws. When it comes to international law, the fact that an individual does not have a specific position and that states are the mechanism by which this position might be established brings the significance of nationality into sharp relief. As a result, one of the outcomes of nationality is the ability of the state to provide an individual with some kind of protection.<sup>9</sup>

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<sup>8</sup> Government of Canada Dof J, "The Meaning of 'Ordinary Residence' and 'Habitual Residence' in the Common Law Provinces in a Family Law Context" (Government of Canada, Department of Justice, Electronic Communications January 7, 2015); [https://www.justice.gc.ca/eng/rp-pr/fl-lf/divorce/rthro\\_cl/index.html](https://www.justice.gc.ca/eng/rp-pr/fl-lf/divorce/rthro_cl/index.html); last accessed on December 31, 2021

<sup>9</sup> "Nationality and Statelessness - Un"; <https://www.un.org/ruleoflaw/files/Nationality%20and%20Statelessness.pdf>; last accessed on December 31, 2021

## KINDS OF DOMICILE

### Domicile of Origin

One of the fundamental concepts that controls the law of domicile is that no individual may remain or exist if he or she does not have a place to call home. In order to put this idea into practice, the law of domicile assigns a domicile to every individual at the time of his or her birth. This is referred to as a domicile or place of origin. It is not required that the country of origin of a person's residence be the same as the country of birth of the individual. In the event of a legitimate child, the person's father's domicile is normally bestowed upon, but in the case of an illegitimate child, the person's mother's domicile is generally granted upon. A person's place of origin is of essential importance, and it must be maintained until there is clear proof that another place of residence has been gained.<sup>10</sup>

### Domicile of Choice

The norm of private international law states unequivocally that an independent individual has the right to move his or her residence. In this context, the term "Independent" refers to a person who is 16 years or older. This is referred to as the "domicile of choice." For a limited amount of time, any other outlying region might serve as the resident's domicile of choice. For an individual to be able to construct a domicile of choice, they must be willing to sever most or all links with their place of birth and settle in the region in which they desire to create a domicile with the clear goal of establishing a permanent residence there. Whenever a person intends to create a domicile of choice, he or she must demonstrate that it has occurred and that the domicile of origin has been removed as a result of the establishment of the residence. If an individual or a group of individuals wishes to establish a residence of their choosing, they must first meet the two requirements listed below:

- The individual should be a legal resident of the country in which he or she is attempting to establish a residence of choice for himself or herself.
- The individual should be certain that he or she intends to live permanently in the state in which he or she wishes to acquire a domicile of choice.

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<sup>10</sup>Marc Cziesielsky, "Nationality, Domicile and Habitual Residence - Georgia Law"; <https://digitalcommons.law.uga.edu/cgi/viewcontent.cgi?article=1264>; last accessed December 31, 2021



The Indian Succession Act, 1925, states that a person or an individual might obtain a new domicile by having a fixed and permanent habitat in the country that is not the person's original domicile. The two aspects of purpose and residency are critical in the process of attaining a domicile of one's own choosing. The phrase "residence" refers to a location where an individual occupies, which includes a place where they drink, eat, and sleep. Real estate is a quantifiable component that can be defined and recognized with relative ease. The phrase "intention" refers to the individual's mens rea or reason for residing in a certain location. However, intention is a non-tangible component that cannot be measured or defined in any manner. In order to get the residence of one's choosing, the individual's aim should not be erratic, but rather it should be firm. Example: If A leaves his nation of origin to live in countries X, Y, and Z, he has no intention of settling down in any of these countries in the future, regardless of how much time has passed. As a result, it is not possible to obtain a preferred residence. However, if A decides to remain in nation Y for the rest of his life, he will be able to get a residence permit in the country of his choosing.<sup>11</sup>

### **Domicile of Dependents**

What kind of people are considered dependents? In the United States, dependents include children under the age of sixteen, married women, mentally handicapped people, such as lunatics and morons, and those who are physically incapacitated. However, in the context of the law of domicile, dependents can be divided into two categories: persons who are unable to gain domicile on their own volition, and individuals who are unable to acquire domicile on their own volition. Because of this, the common norm is that the one who is dependent on another obtains the domicile of dependency of the individual on whom he or she is dependent. Because of a change in the domicile of the person on whom the individual is dependent, the individual's domicile might change as well. As a matter of private international law, the jurisdiction over the domicile of dependency is controlled by English law rather than the laws of the countries whose domicile is to be obtained or whose domicile the individual was previously occupying.

## **COMPARISON BETWEEN THE DOMICILE AND NATIONALITY**

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<sup>11</sup> (*Domicile and Habitual Residence as Connecting Factors In The Conflict of Laws*); [https://www.lawreform.ie/\\_fileupload/consultation%20papers/wpHabitualResidence.html](https://www.lawreform.ie/_fileupload/consultation%20papers/wpHabitualResidence.html); last accessed on December 31, 2021

The nationality of a person symbolizes his or her political standing, as a result of which he or she is obligated to a certain country. A person's civil status is shown by his or her domicile, which is the nation in where he or she has made his or her permanent home. In using any of them to achieve a just judgment, courts have ensured not only that justice is done, but that it is perceived to be done, by providing reasons as to why one determinant should be considered over the other such reasons are the virtues and demerits of those determinants.<sup>12</sup>

### **Merits of Domicile**

- In nations founded by the union of states or by the federal system of government, such as the United Kingdom, Australia, and the United States of America, domicile is the sole criteria that makes sense.
- When it comes to determining personal law, it is more natural and suitable to use the term "domicile." This is important in the sense that if a person has elected to depart his or her nation "of origin," he or she has also opted to renounce the laws of that country. Because natural justice necessitates that one judge by the rules that bind him, a person's place of residence is suitable.
- In certain political entities, such as the United Kingdom and the United States, when people of the same nationality but distinct legal systems coexist, the only practical test is the domicile test.

### **Demerits of Domicile**

- An irrational outcome may assure that a lengthy period of occupancy is not comparable to a permanent residence if it is accompanied by the anticipation of some specific event, the occurrence of which will result in the end of the residence.
- Social and legal uncertainties may develop, resulting in the discontinuation of one's permanent residence. For example, the expiration of living permits, the onset of civil conflicts, and acts of terrorism are all examples of situations that may result in the termination of one's permanent residence.
- Third, domicile is difficult to determine; a person must explain his or her purpose in order to determine domicile yet, the practical intention of a litigant is illusive, making it difficult to define with precision. It is up to the court to decide after properly reviewing the evidence.

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<sup>12</sup> Yvon Loussouarn, "The Duality of the Nationality Principle and the Domicile"; [https://www.idi-iiil.org/app/uploads/2017/06/1987\\_caire\\_01\\_en.pdf](https://www.idi-iiil.org/app/uploads/2017/06/1987_caire_01_en.pdf); last accessed December 31, 2021

### **Merits of Nationality**

- There is no doubt that there are ambiguous proofs of nationality that can be deciphered without the use of complicated legal procedures, but it is difficult to prove this. Aside from naturalization, nationality is determined by the location of birth or parenthood, as well as by the date of registration. As a result, the courts take advantage of the benefit of nationality by making it more easily ascertainable.
- Given that one's nationality cannot be changed without receiving the legal assent of the state of one's new citizenship, it is more stable than one's domicile. This makes nationality a more stable factor than domicile.<sup>13</sup>

### **Demerits of Nationality**

- Applying the test of nationality may direct a litigant's attention to a country with which he or she has lost all connection, or with which he or she has never had a relationship. In the case of a Tanzanian man who's lived his whole life in the UK and whose children are under the age of 18, Tanzanian law applies to them even though they may have no relationship to the country. Because of this, Tanzanian laws based on nationality are unjustly applied to him and his children.
- It is possible that one's nationality is incorrect at times; however, in the eyes of English law, no one can be without a domicile, and no person can have more than one domicile at the same time on the other hand, a person can be stateless, and a person can simultaneously be a citizen of two or more countries.
- Third, under political systems such as federal states and unions, nationality is not useful since there are some scenarios in which there is no law that applies throughout the nation, but rather legislation that applies inside individual states.

After all is said and done, private international law is a discipline like any other issue of law that seeks fairness in its determination, supporting nationality above domicile and likewise depending on the facts of the case in question.

### **CONCLUSION**

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<sup>13</sup> “*The Duality of the Nationality Principle and the Domicile*”; [https://www.idi-iiil.org/app/uploads/2017/06/1987\\_caire\\_01\\_en.pdf](https://www.idi-iiil.org/app/uploads/2017/06/1987_caire_01_en.pdf)&gt; last accessed on December 31, 2021

When it comes to international law there has been a great deal of uproar and confusion about the meanings of the words Domicile, Nationality, and citizenship. This has resulted in a great deal of ambiguity. However, the term "citizenship" was widely used in legal systems to refer to the same entity. To put it simply, a citizen is a person who is a legal resident of the country in which they reside and who is eligible to vote in national elections. On the other hand, a person's place of residence can be determined by their nationality's concept of "domicile." Person-to-community contact is developed when an individual makes a long-term commitment to one particular location. A person can be a citizen of one country and a resident of another, and dealing with these ambiguities can reduce international problems by almost half by providing the appropriate forum to deal with the specific nature of the issue.